

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DE'BORAH BROWN and	:	
KARL BROWN, h/w,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	
	:	No. 01-CV-375
K-MART BAY HILL PLAZA,	:	
K-MART CORPORATION,	:	
PHILLIPS SHOPPING CENTER FUND	:	
LIMITED PARTNERSHIP and	:	
PRIME ALLIANCE GROUP, LTD.,	:	
	:	
Defendants.	:	

MEMORANDUM

Green, S.J.

April , 2001

Presently before the court is Defendant K-Mart Corporation's Motion to Transfer Venue, Plaintiffs' Response and Defendant Phillips Shopping Center Fund Limited Partnership's Response. For the reasons set forth below, Defendant's motion will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs De'Borah Brown ("Mrs. Brown") and Karl Brown ("Mr. Brown") filed a complaint against Defendants K-Mart Bay Hill Plaza, K-Mart Corporation ("K-Mart"), Phillips Shopping Center Fund Limited Partnership, and Prime Alliance Group, Ltd. as a result of events that allegedly occurred on May 21, 1999. (See Compl attached as Def. K-Mart's Ex. A.) On May 21, 1999, Mrs. Brown allegedly slipped and fell at a K-Mart store in Orlando Florida as a result of coming into contact with water on the floor. (See Compl. ¶¶ 6, 10.) Defendants allegedly failed to satisfy their duty to Ms. Brown, as a business invitee, to "keep, inspect, possess, supervise, maintain and repair said floor" from becoming dangerous and unsafe. (See Compl. ¶¶ 8, 9.)

On or about December 27, 2000, Plaintiffs filed a two-count Complaint against the aforementioned Defendants in the Court of Common Pleas in Philadelphia County, Pennsylvania. (See Compl attached as Def. K-Mart's Ex. A.) On January 24, 2001, Defendant K-Mart successfully removed the matter to this court, the United States District Court for the Eastern District of Pennsylvania. (See Doc. No. 1.) Defendant K-Mart now moves to transfer venue of this action from the United States District Court for the Eastern District of Pennsylvania to the United States District Court for the Middle District of Florida. Defendant Phillips Shopping Center Fund Limited Partnership filed a response in support of Defendant K-Mart's motion. Plaintiffs oppose the motion.

II. DISCUSSION

Title 28 U.S.C. § 1404(a) provides: "For convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." In analyzing a motion for transfer of venue, the plaintiff's choice of forum is a paramount consideration and that choice should not be lightly disturbed. See Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971). "The burden is on the moving party to establish that a balancing of proper interests weighs in favor of the transfer, . . . 'and unless the balance of convenience of the parties is strongly in favor of the defendant, the plaintiff's choice of forum should prevail.'" Id. at 25 (citations omitted). In ruling on Section 1404(a) motions, courts "consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (citation omitted).

In the present matter, Defendant K-Mart argues that this action should be transferred to the Middle District of Florida because (1) the alleged incident occurred in Florida; (2) the relevant contacts and sources of proof are located in Florida; and (3) the citizens of Florida have a greater interest in adjudicating the claim compared to the citizens of Pennsylvania. Defendant K-Mart contends that failure to transfer venue would be “unduly oppressive and vexatious” to Defendants. Plaintiffs acknowledge that the alleged incident occurred in Florida, but contend that most of the relevant sources of proof, including witnesses, are located in Philadelphia County, Pennsylvania.¹ Furthermore, Plaintiffs argue that the citizens of Pennsylvania have an interest in adjudicating this matter and desiring K-Mart stores to be safe and free of danger. For those reasons, Plaintiffs oppose Defendant K-Mart’s motion.

Upon review of Defendant K-Mart’s motion and the responses thereto, I find that Defendant K-Mart has failed to meet its burden of showing that the balance of convenience of the parties is strongly in its favor. Weighing the interests enumerated in 28 U.S.C. § 1404(a), I conclude that the relevant factors weigh in favor of honoring Plaintiffs’ choice of forum. Accordingly, this matter shall remain in the United States District Court for the Eastern District of Pennsylvania and Defendant K-Mart’s Motion to Transfer Venue will be denied.

An appropriate Order follows.

¹Plaintiffs contend that Defendant K-Mart has only one witness from Florida who will most likely be produced with knowledge of the alleged incident. In contrast, Plaintiffs argue that they will produce eleven (11) or more witnesses from the Philadelphia area with knowledge of the alleged incident or Plaintiff’s continuing disability. (See Pl.s’ Ex. A.) Defendant K-Mart did not respond to Plaintiffs’ assertions. Plaintiffs also point out that there is no need to review the situs of the incident, because the defect in question—a leaking roof apparently caused water to drip onto the floor—has been repaired. (See Pl.s’ Ex. B.)

CLIFFORD SCOTT GREEN, S.J.